

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

LORI SIMPSON and JOHN SIMPSON,)
)
 Plaintiffs,)
)
 vs.)
)
 HOOK-SUPERX, L.L.C. d/b/a CVS and)
 CVS PHARMACY, INC.,)
)
 Defendants.)

CASE NO.:

11 12 CV 177 RUM

COMPLAINT

COME NOW the Plaintiffs, Lori Simpson ("Simpson") and John Simpson and for their causes of action against the Defendants, Hook-Superx, L.L.C. d/b/a CVS and CVS Pharmacy, Inc. (sometimes collectively referred to as "CVS") state and allege as follows:

I. INTRODUCTION

1. This is a claim by Simpson against CVS for damages she suffered as a result of a CVS employee giving her a flu shot. On December 18, 2010, Simpson went to CVS at its Lima Road location in Fort Wayne, Indiana to get a flu shot. The CVS employee who gave Simpson the shot had a difficult time giving the shot and asked Simpson if anyone had ever told her that she had thick skin. After puncturing the skin, the CVS employee jabbed the needle around inside Simpson's shoulder. Since obtaining the shot, Simpson has had right shoulder pain and problems with motor skills in her right arm.

It is Simpson's contention that the CVS employee was negligent in the manner she gave her the shot in the arm and should have administered the shot in a different manner.

As a direct result of the flu shot, Simpson has been seriously injured. After receiving the flu shot, Simpson immediately felt pain in and around her shoulder. Her arm and shoulder pain increased as the day continued and she ultimately went to Redi-Med for an evaluation. She was advised to and did follow-up with Fort Wayne Orthopaedics ("FWO") for further consultation. Dr. Chaykowski indicated that the likely mechanism of Simpson's problem was the result of an injury to a branch of her axillary nerve from the injection. At the recommendation of FWO, Simpson went through physical therapy and underwent a series of electrodiagnostic studies. An EMG report was negative. A MRI of her shoulder indicated there was fluid in her subdeltoid bursa most consistent with bursitis and that there was a superior bursal surface partial tear along the interior portion of the distal supraspinatous tendon. In May of 2011, Simpson underwent right shoulder arthroscopy by Dr. Sassmannshausen with FWO who noted that Simpson was suffering from significant thickening of the capsule within the rotator cuff and subacromial bursitis with curved undersurface of the acromion. Simpson did further physical therapy but still suffers severe shoulder and neck pain. She has undergone injections of Lidocaine, Marcaine and Depo-Medrol. To date, Simpson has incurred approximately \$34,695.39 in medical bills and 24 hours of lost wages estimated at \$581.76. Simpson has undergone shoulder surgery, several types of physical therapy, injections, chiropractic treatment and acupuncture, but her pain has not gotten any better and is constant. She is a 42 year old woman who was very active in sports and conditioning and was active with her young children. She now cannot do many things she used to do such as running and playing sports with her kids. At this time, it appears Simpson's condition may be permanent. She is seeking an award of damages sufficient to compensate her for her losses including her medical bills, lost wages, her injuries, her

pain and suffering, emotional distress, embarrassment and humiliation, and for all other relief appropriate under the circumstances.

John Simpson is bringing a claim for the loss of consortium of his wife, Lori Simpson.

II. PARTIES

2. Simpson is an individual citizen and resident of Allen County, Indiana who at all times relevant hereto was married to John Simpson.

3. John Simpson is an individual citizen and resident of Allen County, Indiana who at all times relevant hereto was married to Lori Simpson.

4. Hook-Superx, L.L.C. is a limited liability company organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business at One CVS Drive, Woonsocket, Rhode Island. Hook-Superx, L.L.C. does business as CVS Pharmacy.

5. CVS Pharmacy, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island with its principal place of business at One CVS Drive, Woonsocket, Rhode Island.

III. JURISDICTION

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, the Federal Diversity statute, in that the Simpsons are citizens of the State of Indiana, CVS Pharmacy, Inc. is a citizen of the State of Rhode Island and Hook-Superx, L.L.C. is a citizen of the State of which its members are citizens. On information and belief all of the members of Hook-Superx, L.L.C. are not citizens of the State of Indiana. The matter in controversy involves more than \$75,000.00 exclusive of interest and costs. Accordingly, this Court has diversity jurisdiction over this action.

IV. FACTS

7. The Simpsons incorporate by reference Paragraphs 1 through 6 as if same were fully set forth herein.

8. On or about December 18, 2010, Simpson went to the CVS Pharmacy at its Lima Road location in Fort Wayne, Indiana to get a flu shot. A copy of her Vaccine Consent and Administration Record is attached to this Complaint as Exhibit 1.

9. The person who gave Simpson the flu shot is believed to be a CVS employee. This CVS employee who gave Simpson the shot had a difficult time giving the shot and asked Simpson if anyone had ever told her that she had thick skin. After puncturing her skin, the CVS employee jabbed the needle around inside Simpson's shoulder.

10. Since obtaining the shot, Simpson has had right shoulder pain and problems with motor skills of her right arm.

11. After receiving the flu shot, Simpson immediately felt pain in and around her shoulder. She went home to rest. Her arm and shoulder pain increased as the day continued. Simpson became worried and scared due to the severity of the pain and went to Redi-Med for evaluation. It was noted in the Redi-Med records that Simpson had mild tenderness to her acromial joint space, moderate tenderness to her posterior humeral head and superior triceps and mild tenderness to her superior deltoid. In addition, the doctor noted that Simpson's flexion, extension, adduction, abduction, internal and external rotation were all moderately limited by pain. Simpson was diagnosed with shoulder pain and "possible intraarticular injection". She was advised to take over-the-counter Tylenol and Ibuprofen for pain as needed, to rest, and to ice and gently stretch the affected area. In addition, Simpson was told to follow-up with the FWO walk-in clinic.

12. On or about December 29, 2010, Simpson went to see Jerald Cooper, M.D. of FWO for further consultation. Dr. Cooper examined Simpson and had a discussion with Dr. Chaykowski. Dr. Chaykowski believed that the likely mechanism of Simpson's problem was the result of an injury to a branch of her axillary nerve from the injection.

13. A MRI report for Simpson dated February 5, 2011 found she was suffering from bursitis and also a partial tear of her tendon.

14. On May 23, 2011, Simpson underwent right shoulder arthroscopy with arthroscopic subacromial decompression. Dr. Sassmannshausen's report from the surgery indicates that Simpson is suffering from significant thickening of the capsule within the rotator cuff and subacromial bursitis with curved undersurface of the acromion.

15. Despite the surgery her pain continued. At the time of the filing of this Complaint, Simpson had undergone shoulder surgery, several different types of physical therapy, injections, chiropractic treatment and acupuncture, however her pain has not gotten any better and is constant.

16. Prior to this flu shot, Simpson was a healthy female, age 41. She worked out daily in her home gym. Since the flu shot, Simpson is hardly able to perform any type of workout. She cannot perform any upper body workouts due to the extreme pain. She cannot even run on her treadmill, or elsewhere, because running causes severe shoulder pain. Her activities are extremely limited. She frequently drops items because of the pain. The following list reflects additional things that Simpson previously did, which she can no longer do, since receiving the flu shot:

- 1) throw;
- 2) reach behind;
- 3) reach her arms past shoulder level;
- 4) open bottles or jars;

- 5) participate in sports activities- running, bike riding, racquetball, canoeing, golfing, skiing, swimming;
- 6) push her kids on swings;
- 7) play sports with kids (basketball, football and baseball); and
- 8) rake leaves and shovel snow.

The following list shows activities that are difficult and painful for Simpson to do since receiving the flu shot:

- 1) putting on and taking off her blouses;
- 2) difficulty washing and fixing her hair;
- 3) pulling up / pulling down her pants;
- 4) putting on eye makeup;
- 5) using the bathroom;
- 6) love making.

In addition, Simpson suffers from night pain and difficulty sleeping. Her right shoulder pain radiates down into her hand and fingers. Also, the tendon in Simpson's neck has become affected by the limitations to her right shoulder. When she reaches up, Simpson's tendon pops out the right side of her neck.

17. To date, Simpson has incurred approximately \$34,695.00 in medical bills as a direct result of the injury she has suffered from the flu shot. She has suffered lost wages of 24 hours and is an employee of Windstream Communications where she earns \$24.24 per hour, making her lost wages estimated at \$581.76. Simpson is still under the care of Dr. Sassmannshausen and will require additional medical care in the future.

V. STATEMENT OF CLAIMS

Count I – Negligence By CVS

18. The Simpsons incorporate by reference Paragraphs 1 through 17 as if same were fully set forth herein.

19. The CVS employee who administered the flu shot to Simpson did it in a negligent manner causing injury to her.

20. CVS is responsible under the doctrine of *respondeat superior* for the negligence of its employee in administering the shot.

21. As a direct result of the negligence of CVS, Simpson has suffered damages.

Count II – John Simpson’s Loss of Consortium Claim

22. The Simpsons incorporate by reference Paragraphs 1 through 21 as if same were fully set forth herein.

23. As a direct result of the negligence of CVS, John Simpson has suffered the loss of consortium of his wife, Lori Simpson.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, Lori Simpson and John Simpson, pray for the following relief:

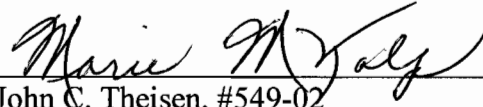
- a) judgment in their favor;
- b) an award of damages sufficient to compensate them for their losses;
- c) costs of this action; and
- d) all such other relief appropriate under the circumstances. .

DEMAND FOR JURY TRIAL

COME NOW the Plaintiffs, Lori Simpson and John Simpson, by counsel, and hereby demand a trial by jury as to all issues so triable.

Respectfully submitted,

THEISEN BOWERS & ASSOCIATES, LLC

A handwritten signature in cursive script, appearing to read "Marie M. Kolp", is written over a horizontal line.

John C. Theisen, #549-02

Nathaniel O. Hubley, #28609-64

Marie M. Kolp, #26863-02

810 South Calhoun Street, Suite 200

Fort Wayne, IN 46802

Telephone: (260) 422-4255

Facsimile: (260) 422-4245

Attorneys for Plaintiffs

Vaccine Consent and Administration Record
Pharmacist Immunization Program

Information about patient receiving vaccination (Please print):

Last Name <u>Simpson</u>	First Name <u>Lori</u>	Middle Init. <u>A</u>	Date of Birth <u>6/22/49</u>	Sex <u>MALE</u>
Street <u>10923 Still Hollow Run</u>	City <u>Fort Wayne IN</u>	State <u>IN</u>	Zip <u>46816</u>	Phone # <u>317-479-923</u>
Medical Condition(s) <u>cardiovascular</u>		Allergies <u>(None)</u>		
Primary Care Physician (PCP) <u>Am. Kulkarni</u>		PCP Contact Information <u></u>		

Please answer the following questions:

	YES	NO	DON'T KNOW
1. Are you sick today? (For example: a cold, fever or acute illness)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Do you have allergies or reactions to medications, foods or any vaccine? (For example: eggs, gelatin, neomycin, Thimerosal, latex, etc.) Please list <u>antibiotics</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you take anticoagulation medication? (For example: warfarin, Coumadin or other blood thinner)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Do you have a long-term health problem with heart disease, lung disease, asthma, kidney disease, metabolic disease (e.g. diabetes), anemia or other blood disorder?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you have cancer, leukemia, AIDS or any other immune system problem?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Do you take cortisone, prednisone, other steroids, or anticancer drugs, or have you had radiation treatments?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Have you had a seizure, brain, or other nervous system problem? (For example: Guillain-Barré syndrome)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. During the past year, have you received a transfusion of blood or blood products, or been given immune (gamma) globulin or an antiviral drug?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. For women: Are you pregnant or nursing? Could you become pregnant during the next month?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Have you received any vaccinations in the past 4 weeks?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please read the following statements and sign on the signature line below

CONSENT FOR SERVICES, MEDICAL RECORDS and HIPAA PRIVACY INFORMATION

I have been provided with the Vaccine Information Sheet corresponding to the vaccine(s) that I am receiving. I have read or have had explained the information provided about the vaccine I am to receive. I have had the chance to ask questions that were answered to my satisfaction. I understand the benefits and risks of vaccination and I voluntarily assume full responsibility for any reactions that may result. I request that the vaccine be given to me or to the person named above for whom I am authorized to make this request.

I voluntarily authorize and direct my health care provider at CVS/pharmacy to use or disclose my health information during the term of this Authorization to the physician responsible for this protocol of specific health information of people vaccinated at CVS/pharmacy (standing order provider), my Primary Care Physician (PCP), my insurance plan and/or state or federal registries, where required, for purposes of treatment, payment or other health care operations (such as administration or quality assurance). This authorization permits CVS/pharmacy to disclose the following medical records: only documents related to the vaccination(s) received today. This Authorization will remain in effect until my health care provider discloses my health information to the recipient identified above; my health care provider cannot guarantee that the recipient will not redisclose my health information to a third party. The third party may not be required to abide by this Authorization or applicable federal and state law governing the use and disclosure of my health information. I understand that I may refuse to sign or may revoke (at any time) this Authorization for any reason and that such a refusal or revocation will not affect the commencement, continuation or quality of my treatment by my health care provider. I understand that this Authorization will remain in effect until the term of this Authorization expires or I provide a written notice of revocation to my health care provider. The revocation will be effective immediately upon my health care provider's receipt of my written notice, except that the revocation will not have any effect on any action taken by my health care provider in reliance on this Authorization before it received my written notice of revocation.

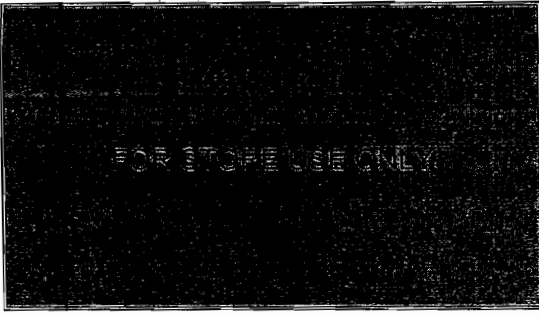
I acknowledge that I have received the CVS/pharmacy Notice of Privacy Practices, which is provided on the back of the Patient copy of this consent form.

Medicare Billing: I do hereby authorize CVS/pharmacy to release information and request payment. I certify that the information given by me in applying for payment under Medicare is correct. I authorize release of all records to act on this request. I request that payment of authorized benefits be made on my behalf.

X [Signature] Date: 12/15/11
Signature of patient to receive vaccine or person authorized to make the request (parent/guardian)

This section to be completed by Pharmacy:

VACCINE ADMINISTRATION INFORMATION:					
Date <u>12/18/11</u>	Product <u>Fluorin</u>	Manufacturer <u>Novartis</u>	Vol (mL) <u>0.5</u>	Route <u>IM</u>	Site <u>Delta</u>
Lot # <u>117891P</u>	Exp. Date <u>12/24/12</u>	VIS Version Date <u>12/18/11</u>	Date VIS Given to Pt <u>12/18/11</u>	Administering Immunizer Name & Title <u>Christina Channing</u>	



Please keep this information as part of your permanent medical record.

Thank you for choosing CVS/pharmacy.

EXHIBIT

1